

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

OREGON STEEL MILLS, INC.

Employer

And

Case 36-RC-6171

NORTHWEST METAL PRODUCERS
ASSOCIATION

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

Summary

The Employer, Oregon Steel Mills, Inc., operates a steel manufacturing and processing facility located in Portland, Oregon (herein "Facility"). The Petitioner, Northwest Metal Producers Association, filed a petition with the National Labor Relations Board seeking to represent a unit consisting of approximately nine mechanical testers (MTs) and five sampler burners employed by the Employer in its technical services department.

At the pre-election hearing, and in their post hearing briefs, the parties disputed whether the unit of employees sought by the Petitioner is appropriate. Contrary to the Petitioner, the Employer contends that the petitioned-for-unit is not appropriate. Specifically, the Employer maintains that the unit sought by the Petitioner is not appropriate because it fails to include, at the very least, all technical service department employees. Alternatively, the Employer argues that the unit should also appropriately

¹ Both parties filed timely briefs, which were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer.

include all other technical employees working outside the technical services department and all office clericals and certain plant clericals. The Employer contends that the larger unit, of all clericals and technicals, is supported by historical bargaining at the Facility, at other Employer facilities and an industry standard.

I have considered the evidence presented at the hearing and the parties' briefs on the issue. As discussed below, I find the petitioned-for unit is appropriate and order that an election be held in that unit for the purpose of determining representation.

Background

The Employer is engaged in the business of manufacturing and processing steel plate and coil products from scrap metal at facilities located in Portland, Oregon, Napa, California and Pueblo, Colorado. Only the Employer's Portland Facility is at issue in this proceeding.

Recently in Case 36-RC-6168 which involved the same parties and the Employer's operations at the Facility, I found a production and maintenance (P&M) unit appropriate for collective bargaining and ordered that an election be held in that unit. In 36-RC-6168, the Petitioner requested that the MTs and the sample burners be included in the P&M unit while the Employer opposed the inclusion of those two classifications. I found that the record in that matter revealed insufficient evidence to establish that the sample burners and mechanical testers share a sufficient community of interest with P&M employees or to establish whether the MTs and sample burners' community of interest sufficiently lies with excluded quality assurance employees whom the parties stipulated out of the P&M unit. The record in the prior case was also not developed with regard to the functional integration or interchange, if any, of the mechanical testers and sample burners with quality assurance employees. On top of this, there was the issue in the prior case regarding the temporary status of sample burners, which was not fully developed in the record and which is relevant to a determination of the unit placement of these employees. For these reasons, I excluded the MTs and the sample burners from the P&M unit in Case 36-RC-6168. In the instant matter, the parties referred me to my prior Decision and Direction of Election in Case 36-RC-6168 and I have taken administrative notice of those prior proceedings in reaching a decision in the case at hand.

With respect to the Employer's operations at the Facility, the Employer is engaged in the business of manufacturing and processing steel plate and coil products from scrap metal. The process begins by using electric arc furnaces to melt down scrap metal and cast the molten metal into approximately 35-ton slabs. The slabs are then reprocessed and eventually rolled into either plate or coil for eventual sale.

In terms of the physical layout of the Facility, the Employer has separate administration and employee resources buildings where its administrative offices are located. In 36-RC-6168, the parties stipulated that the clericals who work in the administrative offices are office clericals and, thus, were excluded from the P&M unit found appropriate in that matter. All employee personnel records are kept in the employee resources building.

Within the "gate" of the Employer's Facility and a couple of hundred feet from the administration building, the Employer devotes 150 acres and three buildings to housing the majority of its P&M employees. The largest of these buildings is the mill. It is divided

into what appears to be six departments: steel_making, rolling, shipping, central maintenance, products and planning departments.

Also located within the gates are its central services building and a building housing the four sample burners. The central services building houses the tech services and stores departments. With the exception of the MTs and the sample burners, the parties stipulated in 36-RC-6168 to the exclusion of the tech employees from the P&M unit. With regard to the stores departments, an administrative assistant, carpenters, stores clerks and others are located within that department.

The building housing the four sample burners is located between the mill and the central services building. Although the sample burners are in a separate building, they report to tech services.

There is also a parking lot located outside the gate and rail spurs leading out of the plant. Two miles away is the Employer's heat treatment facility where the heat treatment department is located. The parties stipulated to the inclusion of certain classifications of employees working at this off-site heat treatment facility into the P&M unit found appropriate in 36-RC-6168.

The record reveals that the MTs are located in the lab on the first floor of the central services building in the technical services department. Doug Stalheim, manager, heads the technical services department. Also in the technical services department and located in cubicles in the office area are two quality assurance coordinators (QACs), a quality assurance records administrator (QARA), a tech order entry coordinator (also known as the technical order database entry coordinator or administrator) and two tech support coordinators.³

The quality supervisor supervises the two QACs and the QARA. However, the quality supervisor position is currently vacant and their second level supervisor, the quality manager, who is in turn supervised by the department manager, supervises the QACs and the QARA. The tech order entry coordinator and the tech support coordinators are supervised by the department manager. The MTs and sample burners are supervised by the mechanical testing supervisor, who is supervised by the technical services department manager, Doug Stalheim.⁴

The Employer also employs four metallurgists in the technical services department. The parties stipulated that the metallurgists are professionals within the meaning of Section 2(12) of the Act.

On the first floor of the central services building, besides technical services, are the chemists, who report to the steel-making department and who are also excluded from the unit by way of the parties' stipulation that the chemists are professionals. Thus,

³ The record is unclear, but it appears that there are two separate tech support coordinator classifications. One classification supervises the professional system engineers and technicals and is excluded by stipulation as supervisors. The other, listed here in the technical services department, appears to be a clerical position.

⁴ The supervisors and managers are excluded from any unit found appropriate, as they are stipulated statutory supervisors.

neither party contends that the professional chemists or metallurgists should be included in any unit found appropriate.

Located on the second floor of the central services building is the Employer's central store department, which houses employees included in the P&M unit. The plant records employee, who reports to the Employer's Production Planning and Control (PP&C) department located in the administrative building outside the gated area, also has an office on the second floor. There is a separate lunchroom and restroom on the second floor.

With respect to the nature of the sample burners' work, they prepare samples of the product for testing by the MTs. Three of the sample burners are temporary employees supplied by a temporary agency, Barrett Business Services.⁵ However, it appears that the Employer controls, in significant part, the terms and conditions of employment for the temporary employees. After 60 days of work as a temporary, the Employer apparently provides a temporary sample burner with an opportunity to become a full-time employee of the Employer and, consequently, the sample burner can thereafter progress to the position of MT. In any event, the parties have stipulated to the inclusion of the temporary sample burners in any unit found appropriate.

Sample burners report to the technical services department. However, they are physically located in a building next to the rolling mill and 20 yards from the central services building. It appears that no P&M unit or other employee classifications are stationed in the sample burner's building. However, a shearer, located in the rolling mill and a classification that the parties stipulated into the P&M unit, cuts off samples from product and transports the samples to the sample burners by conveyor belt. Sample burners use torches, saw bands, plasma arcs and grinders to cut and mark samples they receive from the shearer. Like MTs, the sample burners wear long-sleeved shirts, safety glasses, safety boots, cutting goggles and hard hats as necessary personal protection equipment in performing their duties.

After the samples are prepared for testing by the sample burners, MTs will pick up the samples and transport them by truck to the lab along with the samples they collect from the shipping department, coil yard, and other areas where P&M unit employees work. They also pick up samples from Feralloy, a separate company located on the Employer's property. MTs devote about two hours a day to collecting samples.⁶ MTs use metal lathes, band saws, press and milling machines to determine tensile strength, grade, and other characteristics of the samples.

MTs and sample burners work 10-hour days, on a four-day on and four-day off schedule with differing start dates. Sample burners may work up to 12 hours a day, which matches the schedule of the rolling mill workers included in the P&M unit. Due to the staggering of the shifts described above, MTs are present at the Facility 24 hours a day, 7 days a week. The sample burner position is an entry-level position requiring little or no previous experience and is rated as a grade 4 in the Employer's wage/grade pay system.⁷

⁵ Barrett Business Services was notified of the hearing in this case but declined to participate.

⁶ In Case 36-RC-6168, it was not clear whether the MTs had any significant contact with P&M employees in connection with picking up samples from the P&M work areas.

⁷ In Case 36-RC-6168, the record revealed that the wage/pay range ran from grade 1 through grade 17.

MTs are paid at the wage of a grade 6. It is apparent from the record that MTs are more skilled than sample burners.

Both MTs and sample burners use the lunchroom in the technical services department, although they occasionally will use the lunchroom on the production floor in the rolling mill for the purpose of accessing the vending machines located there. Both MTs and sample burners report directly to the mechanical testing supervisor. The mechanical testing supervisor does not supervise any other employee classification.

MTs and sample burners' contact with customer service representatives (CSRs), located in the sales department is limited to CSRs seeking information as to when a group of outside customers can tour the lab. Even at that, the contact is infrequent and mostly limited to contacts with the mechanical testing supervisor. MTs on a late shift--when there is no QAC or the QARA on duty--may have contact with a shipping clerk if there is a problem with a test report. However, it appears that this contact is infrequent. MTs may also have occasional contact with a systems technician who repairs computers for uses plant-wide. However, this contact is infrequent. The record does not reveal that MTs and sample burners have any significant contact with any other classifications at the plant.

With respect to transfers, one MT transferred into the MT position from a plate burner position located in the shipping department. One MT transferred from steelmaking. One MT transferred to a hot bed inspector position. These three transfers involved transfers out of or into a P&M unit positions. The tech order entry coordinator transferred into his present position from a MT position. All MT and sample burner positions are open to any employee who wishes to apply and the positions are advertised plant-wide.

The Other Technical Service Department Classifications

1.) Quality Assurance Coordinators

There are two QAC positions. One is scheduled to work from 9:00 a.m. to 5:00 p.m. The other QAC works from 7:00 a.m. to 3:00 p.m. Their workdays are not specified in the record, but appear to be during a regular week schedule. QACs will fill in for the QARA when she is not available.

One QAC, Angie McCasland, works with employees in the accounting, sales, purchasing and traffic, and shipping departments in handling customer claims. Customer complaints may entail such problems as a customer's failure to receive shipment, a shipment falling short of the grade specified, or the customer didn't receive the correct number of pieces. Complaints have also concerned wrong heat numbers on reports that apparently relate to the quality, nature and/or characteristics of the Employer's product received by a customer.

When a customer communicates a complaint to one of the two shipping clerks in the shipping department or to one of the eight CSRs in the sales department, that employee phones McCasland or the QARA. Sometimes the customer will call McCasland directly. When a complaint comes to McCasland, she advises the sales department of the complaint number and proceeds to investigate the complaint. If a complaint involves more than \$10,000, McCasland will advise the Accounts Receivable/Payable Manager in the accounting department of the complaint and McCasland will keep that manager apprised

of the progress of her investigation. Generally, McCasland is in contact with the Accounts Receivable/Payable Manager twice a week.

McCasland works with the accounts receivable specialist (also in the accounting department) on a daily basis. McCasland sends the accounts receivable specialist disposition forms proposing resolutions reached in connection with customer complaints, which McCasland investigates. In return, the accounts receivable specialist informs McCasland whether the proposed settlement is rejected or accepted. The accounting department is located in the administration building outside the gated area, which encloses the central services building, the rolling mill and the sample burners' building/worksite.

McCasland has contact with the purchasing and traffic department, located in the Administration building, when bills received from trucking companies do not conform to the Employer's records or when a decision is made to transport material that is the subject of a complaint. When a customer complains that they did not receive what the customer ordered, she will also contact the order entry clerk in PP&C, which is also located in the Administration building, and asks that employee for copies of the mail order received by the clerk and the customer's order to see if they conform. These forms originate in the sales department and are entered into the Employer's computer system by the order entry clerk.

McCasland has contact with other employees in other departments as her investigation may require. However, it appears that McCasland has contact with the MTs only if a sample is delivered to her by a customer for retesting. In that event, she either calls to a MT from outside the lab, because she does not have the safety equipment to enter the lab, or she gives samples to the mechanical testing supervisor to deliver to the MTs. The contact she has with MTs does not appear to be that frequent. The QACs, including McCasland, have little or no contact or interaction with the sample burners.

The other QAC acts more like a customer service representative (CSR) for special customers, e.g., the government of Israel, and likewise appears to have little contact with the petitioned-for employees. The record is otherwise sparse as to her duties. Both QACs are a grade 8 in the Employer's wage grade system.

2. QARA and Tech Order Entry Coordinator

The QARA (Quality Assurance Records Administrator) works from 7:00 a.m. to 3:00 p.m. She handles all test reports and makes sure reports are complete. The tech order entry coordinator's working hours are not clear from the record and neither the QARA's nor the tech order entry coordinator's workdays are specified in the record, but appear to be during a regular week schedule. The QARA is paid at a grade 5 while the tech order entry coordinator is at a grade 7.

Regarding the duties of the tech order entry coordinator, he actually enters information into the computer and has his work reviewed by the QARA as part of the latter's duties. The QARA will also have contact with other employees in other departments when the need arises. For example, the QARA (or the QAC) contacts the administrative assistant (AA) in the heat treat department, who does the billing for test reports from her department, if there is a problem with such billing. The QARA will also contact the order entry clerk in PP&C to obtain a copy of a mill order.

The QARA also sends out “remark” letters. Remark letters are letters sent out by the Employer to customers when a heat mark on a plate does not conform to the test report. Such “marks” may include a missing American Bureau of Shipping stamp. These letters allow the customer to correct the heat mark by adding the stamp. Although the significance of the letters, heat mark and shipping stamp are not readily apparent, it appears that accuracies in this regard are important to the Employer and its customers and the uses to which the Employer’s product is put.

It does not appear that the QARA interacts with the petitioned-for MTs and sample burners. The technical services department manager testified that the tech order entry coordinator has less than 10 percent contact with MTs, about one half to one hour a day at most. According to Dennis Erceg, an MT, MTs’ contact with the tech order entry coordinator is limited to a couple of minutes twice a week.

All the Employer’s employees share the same health and pension benefits and are part of the same wage rate/grade system. All employees are also subject to the same disciplinary policy. The record also reveals that clericals, technicals, MTs, and sample burners are permitted to take half or single days of accrued leave -- this option is not available to some of the P&M employees.

3.) Technical Support Coordinators

There are two tech support coordinators. Their hours and workdays were not specified in the record, but they appear to work during a regular weekday schedule. The record is not altogether clear as to their specific duties; however, they are a grade 8 in the Employer’s wage scale. They serve as fill-ins for the QAC, QARA and tech order entry coordinator when employees in these classifications are on vacation or otherwise absent. They also share an office with the tech order entry coordinator. Additionally, the tech support coordinators perform fieldwork, such as auditing specification data on slab intended for delivery to the Employer from outside companies. Some of those outside companies are located outside the United States, which results in the tech support coordinators traveling to those companies. One tech support coordinator just recently returned from an audit in Mexico.

They also field questions from the sales department on steel specifications and the like. Tech support coordinators also communicate with the transportation/traffic department when product needs to be transported and communicate with PP&C when product specification information is needed to plan production.

The Employer intends to assign more of the metallurgist’s duties to the tech support coordinator position and intends the position to become a “springboard” to a professional metallurgist position. The Employer refers to this classification as in “transition.” However, this transition has not yet occurred.

The tech support coordinators have minimal contact with MTs and sample burners. The tech support coordinators may provide test frequency information or the mill order to the MTs for a particular sample. However, this contact is limited to phone conversations with MTs and amount to, at most, twice a week, and a few minutes each time.

Parties Positions

The Petitioner initially petitioned for a unit of MTs, sample burners, and plant clericals in the technical services department. However, it became apparent during the hearing that the Petitioner believed that there was an administrative assistant in technical services, which was the only other classification the Petitioner was apparently concerned about including in the unit as a plant clerical. However, the Petitioner later learned in the instant proceeding that there is no administrative assistant in technical services department. As such, the Petitioner timely amended its petition to reflect that it only seeks the MTs and sample burners.

Contrary to the Petitioner, the Employer contends that the unit sought by the Petitioner is a fractured unit, and thus, inappropriate for a number of reasons. Among those reasons not already described above, the Employer contends that, in the past at the Facility, the Employer recognized two local United Steelworkers Unions. One local represented a unit of P&M employees while the other local essentially represented the balance of the Employer's employees in a clerical and technical unit. That representation for both of these units ended via decertification elections in or about 1984. The MTs and the sample burners were apparently part of the clerical and technical unit. The Employer also argues that, at its other facilities, there currently is a similar longstanding collective-bargaining history involving a bifurcation of the Employer's employees into two units -- a P&M unit and a clerical and technical unit -- and that such a history is, indeed, the norm in the industry. In line with this argument, the Employer maintains that the appropriate unit should be a clerical and technical unit including the following:

accounts payable specialists, accounts receivable specialists, inventory coordinators, receptionist/secretary, administrative assistants, stores clerks, production coordinator, database administrator—operations, systems technician I, order entry clerk—PP&C, planner Is and IIs, plant records, buyer, buyers & capital construction seniors, contract administrators, mail room clerk, scrap coordinator, traffic coordinator, designers, process technicians, customer service representatives, database administrator—operations, shipping clerks, scale clerks, divisional engineer coordinator, inventory coordinator, drafter II, administrative assistants, stores clerks, production coordinator, designers, process technicians, database administrators-operations, shipping clerks, scale clerks, and divisional engineer coordinator.

The Employer's proposed unit consists of 90 employees. The Employer presented evidence at the hearing regarding the functional integration, of the positions in this broad unit of clerical (office and plant) and technical employees, in the Employer's process. The record reveals that this functional integration is of a low degree and that contact is minimal or even not existent for a number of the classifications, in this broad unit, with the MTs and sample burners.

In Case 36-RC-6168, the Employer successfully argued that certain classifications were "plant clericals" who should appropriately be included in the P&M unit. However, in the instant matter, the Employer now seeks to include some of those same plant clericals in the overall clerical and technical unit including the MTs and sample burners, which it now contends is the appropriate unit in this matter.

Analysis

In deciding the appropriate unit, the Board first considers the Union's petition and whether the unit sought is appropriate. **P. J. Dick Contracting**, 290 NLRB 150 (1988).

The Board, however, does not compel a Petitioner to seek any particular appropriate unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the most appropriate unit for collective bargaining. **Black & Decker Mfg. Co.**, 147 NLRB 825, 828 (1964). Further, there is nothing in the statute, which requires that the unit for bargaining be the "only" appropriate unit, or the "ultimate" unit, or the "most" appropriate unit; the Act only requires that the unit be "appropriate." **Morand Bros. Beverage Co.**, 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951); see **Staten Island University Hospital v. NLRB**, 24 F.3d 450, 455 (2d Cir. 1994); see also **American Hospital Assn. v. NLRB**, 499 U.S. 606, 610 (1991), interpreting the language of Section 9(a) as suggesting that "employees may seek to organize 'a unit' that is 'appropriate' not necessarily the single most appropriate unit."

A major determinant in an appropriate unit finding is the community of duties and interests of the employees involved. When the interests of one group are dissimilar from those of another group, a single unit is inappropriate. **Swift & Co.**, 129 NLRB 1391 (1961). See also **United States Steel Corp.**, 187 NLRB 522 (1971). But the fact that two or more groups of employees engage in different processes does not by itself render a combined unit inappropriate if there is a sufficient community of interest among all these employees. **Berea Publishing Co.**, 140 NLRB 516, 518 (1963).

Many considerations enter into a finding of community of interest. See, e.g., **NLRB v. Paper Mfrs. Co.**, 786 F.2d 163 (3d Cir. 1986). The factors affecting the ultimate unit determination may be found in the following sampling: degree of functional integration; common supervision; the nature of the employee skills and functions; interchangeability and contact among employees; general working conditions; and fringe benefits. However, the important consideration remains the overall community of interest among the several employees. See **United States Steel Corp.**, 187 NLRB 522 (1971); **Brand Precision Services**, 313 NLRB 657 (1994) and **Aerospace Corp.**, 331 NLRB No. 74 (2001).

Another factor, in determining the appropriateness of a bargaining unit, is prior bargaining history, which is given substantial weight. The reason it is given substantial weight is because the Board is reluctant to disturb a unit established by collective bargaining, which is not repugnant to Board Policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act. **Red Coats Inc.**, 328 NLRB 205 (1999); **Washington Post Co.**, 254 NLRB 168 (1981); **Fraser & Johnson Co.**, 189 NLRB 142, 151 fn. 50 (1971); **Lone Star Gas Co.**, 194 NLRB 761 (1972); **West Virginia Pulp and Paper Co.**, 120 NLRB 1281, 1284 (1958); **Great Atlantic & Pacific Tea Co.**, 153 NLRB 1549 (1965). The rationale for this policy is based on the statutory objective of stability in industrial relations. See also **Hi-Way Billboards**, 191 NLRB 244 (1971). However, in the instant case, there is no stability at risk because the two historical and all encompassing units decertified the United Steelworkers nearly 20 years ago at the Facility. Thus, to adhere to such a history in the circumstances of this case would have the impermissible effect of thwarting the MTs and sample burners rights to seek representation in other unit forms, which may also be "appropriate."

Moreover, as in many areas of substantive law, exceptions are made to the general rule. For instance, the bargaining history of a group of employees in a plant does not control the unit determination for every other group of unorganized employees in the plant. **North American Rockwell Corp.**, 193 NLRB 985 (1971); **Piggly Wiggly**

California Co., 144 NLRB 708 (1963); **Arcata Plywood Corp.**, 120 NLRB 1648, 1651 (1958); **Joseph E. Seagram & Sons, Inc.**, 101 NLRB 101 (1953). Here, there is no issue because no unit of employees at the Facility has been or is currently represented by any labor organization and this has been the case for about 18 years.⁸

Assuming for the sake of argument that there exists an industry-wide standard of only two units (one a P&M unit and the other made up of the remaining plant and office clericals and technicals), the Board has held, for similar reasons noted above, that the bargaining pattern at other plants of the same employer or in the particular industry will not be considered controlling in relation to the bargaining unit of a particular plant. **Big Y Foods**, 238 NLRB 855 (1978); **Miller & Miller Motor Freight Lines**, 101 NLRB 581 (1953), although, it may be a factor in unit determination, **Spartan Department Stores**, 140 NLRB 608 (1963). In view of the above and the record as a whole, the bargaining history at the Facility, at other Employer facilities, and unsubstantiated claims of an industry norm in this regard, are neither controlling nor material to the unit determination in this proceeding.

Moving on to the relevant community of interest factor concerning the degree of functional integration, the record reveals that the MTs and the sample burners are no more functionally integrated with the clericals and technicals than they are with the P&M employees. Certainly all work is integrated in the Employer operations at the Facility but the degree of that functional integration is low, as it relates to the MTs and sample burners work and the work of the clericals and/or technicals, classifications the Employer seeks to include in the unit. Thus, I find that this factor does support the Employer's request for a technical service department unit or for the broader unit comprised of all office and plant clerical and technical employees.⁹

With respect to supervision, although all technical service department employees ultimately report to the manager of that department, the MTs and the sample burners share the same immediate supervisor who is different from the supervisors who immediately supervise the other classifications in this department. It is also apparent that common supervision is also far more absent in the historical unit sought by the Employer.

In terms of skills and functions, the MTs and sample burners primarily work with their hands utilizing skills, tools and machinery not used by the other clerical and technical employees the Employer seeks to include in the unit. It is evident that the MTs and sample burners may perform some paperwork and/or utilize computers in their day-to-day work. However, such is incidental to their primary duties of manual work on the Employer's product. On the other hand, paperwork, computer work, customer contacts dealing with complaints and/or service, make up the primary aspect of the work for the other technical and/or clerical employees the Employer seeks to include in the unit.

⁸ As noted above, I have taken administrative notice of the proceedings in Case 36-RC-6168, involving the same parties, and, in particular, of the certification of results that issued on December 2, 2002, showing that employees voted against representation in the P&M unit.

⁹ See **Seaboard Marine Ltd.**, 327 NLRB 556 (1999); **Atlanta Hilton & Towers**, 273 NLRB 87 (1984); **NCR Corp.**, 236 NLRB 215 (1978); **Michigan Wisconsin Pipe Lining Co.**, 194 NLRB 469 (1972); **Threads-Inc.**, 191 NLRB 667 (1971); **H.P. Hood & Sons**, 187 NLRB 404 (1971); **Monsanto Research Corp.** 185 NLRB 137 (1970); and **Transerv Systems**, 311 NLRB 766 (1993).

Regarding interchangeability and contact, MTs and sample burners work different schedules than the other technical services and clerical employees at issue. Although one MT transferred into the tech order entry coordinator position, this transfer was voluntary and is certainly so minimal in frequency as to be immaterial in this unit placement decision. The Board has long regarded permanent transfers to be a less significant indication of actual interchange than temporary transfers. See **Overnite Transportation Co.**, 331 NLRB 662 (2000); **Red Lobster**, 300 NLRB 908, 910 (1990). The record clearly establishes that any contact that the MTs and the sample burners have with other employees is limited and infrequent. Indeed, the record clearly established that the MTs and sample burners generally have no significant daily contact with nearly all of the technical and clerical employees the Employer seeks to include in the unit.

With respect to working conditions, the record establishes that clericals generally do not access the MTs and sample burners work areas due to the nature of their work and the need to wear protective clothing and equipment. The same would apparently hold true for other technical employees whose work differs in material respects from the MTs and sample burners.

In view of the above and the record as a whole, I find that the MTs and sample burners share a sufficient community of interest that is distinct from the remaining technical service department employees and that is certainly distinct from the balance of technical employees, plant clericals and/or office clericals that the Employer seeks to include in the unit. Thus, I find that the unit sought by the Petitioner is appropriate. See **Armco, Inc.**, 271 NLRB 350 (1984).¹⁰

The unit found appropriate herein consists of 14 employees.

Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time and temporary and/or agency employees employed as mechanical testers (MTs) or sample burners at the Employer's Portland, Oregon Facility;

¹⁰ The Employer cites **Seaboard Marine**, 327 NLRB 556 (1999), **Phoenician**, 308 NLRB 826 (1992) and **Brand Precision Services**, 313 NLRB 657 (1994) in contending that the petitioned-for unit is inappropriate. However, contrary to the evidence here, the evidence in those cases showed the employees at issue in those cases had a community of interest sufficient to require a single unit that consisted of the disputed positions.

excluding all other technical service department employees, office clericals, plant clericals, all other technical employees, production and maintenance employees, professionals, guards, watchmen and supervisors as defined in the Act.

Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Northwest Metal Producers Association. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

1. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

2. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office in Portland, Oregon, an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before December 26, 2002. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to

comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (503) 326-5387. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

3. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

4. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on January 2, 2003. The request may **not** be filed by facsimile.

DATED at Seattle, Washington this 19th day of December 2002.

Catherine M. Roth, Acting Regional Director
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